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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,072	04/18/2001	Viktor Brost	655.00955	8832

7590 07/29/2003
WOOD, PHILLIPS, VanSANTEN,
CLARK & MORTIMER
Suite 3800
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Chicago, IL 60661

EXAMINER

DUONG, THO V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/29/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,072

Applicant(s)

BROST ET AL.

Examiner

Tho v Duong

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 3-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Receipt of applicant's response is acknowledged and entered as paper 17. Upon reviewing the application's argument regarding the restriction requirement, the examiner has withdrawn the restriction requirement, which sent in 04/18/2003. The examiner also acknowledges the notification of a co-pending application, which now is patent No. 6,513,585B2, to the current application in the amendment filed 1/22/2002.

Claims 1-13 are pending. Claims 3-10 have been withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2 and 11-13 are rejected under the judicially created doctrine of double patenting over claims 1,2,8-10 and 16 of U. S. Patent No. 6,513,585 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a radiator core including a plurality of general rectangular shaped tubes interleaved with layers of fins; a collecting tank attached to the core in a fluid tight manner; each tube having a pair of side walls extending through the core and joined by end walls; each tubes terminating at one end thereof in a formed segment wherein the end walls of each tube are bifurcated for a distance from one end of the tube adapted to contact a side wall of an adjacent tube in the core; the collecting tank having walls thereof extending over and past the bifurcation of the end walls to form a fluid tight joint between the walls of the collecting tank and the end walls of said tubes; a step of adapting one end of each tube is carried out after assembling the radiator core and the step of adapting includes forming at least one of the side walls in formed segment to contact a side wall of an adjacent tube in the core by inserting a forming tool into the one end of each of the plurality of tubes.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application,

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which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968).

See also MPEP § 804.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Jamison et al. (US 6,311,768). Jamison discloses (figures 1,7 and 8) a radiator core comprising a radiator core (18) defining a front and a rear face thereof and including a plurality of generally rectangular shaped tubes (20) interleaved with layers of fins (22); a collecting tank (26,72) attached to the core in a fluid tight manner to provide fluid communication between the tube (20) and the collecting tank; the tubes each having a pair of side walls (48,62) extending through the core and joined by end walls (50,52) at the front and rear faces of the core. Jamison further discloses (figure 8) that the tubes (20) each terminating at one end thereof in a formed segment wherein the end walls (50,52) of each tube are bifurcated for a distance from one end of the tube and at least one of the side walls (62) is directed away from the other side wall to be adapted to contact a side wall of an adjacent tube in the core; the directed side wall (62) being joined in a fluid tight manner to the contacted side wall of the adjacent tube (by brazing). Jamison further discloses (figure 7) that each collecting tank (26) having walls (70,72) extending over the front and rear faces of the core past bifurcation of the end walls, which start at portion (58), and joined

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in a fluid tight manner to the end walls of the tubes at a portion (100) along and beyond the bifurcation.

Conclusion

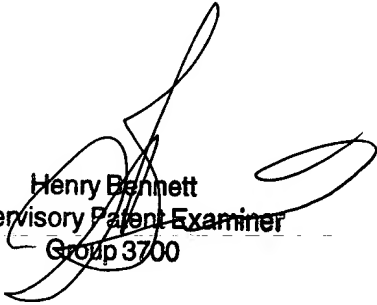
Any inquiry concerning this communication or earlier communication from the examiner should be directed to Tho Duong whose telephone number is (703) 305-0768. The examiner can normally be reached on from 9:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703)308-7764.

Any inquiry of a general nature or relating to status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0861.

Tho Duong

July 25, 2003


Henry Bennett
Supervisory Patent Examiner
Group 3700